

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6228 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

=====

1 Whether Reporters of Local Papers may be
allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair
copy of the judgment ?

4 Whether this case involves a substantial
question of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge ?

=====

**PURVANG MEHTA THRO.HIS FATHER AND NATURAL -
Petitioner(s)**

Versu/home/bhatt/sca596707o2.sxws

**GUJARAT SEC/home/bhatt/sca596707o2.sxwONDARY AND
HIGHER SECONDARY BOARD & 4 - Respondent(s)**

=====

Appearance :

MR AK CLERK for Petitioner(s) : 1,

MR AD OZA for Respondent(s) : 1,

None for Respondent(s) : 2 - 4.

MS ARCHANA RAVAL, AGP. for Respondent(s) : 2-5.

=====

CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 08/03/2007

ORAL JUDGMENT

1 Having heard learned Advocate appearing on behalf of the petitioner, learned Advocates appearing for the petitioners in cognate petitions, and respondent No.1 Board as well as learned Assistant Government Pleader appearing on behalf of respondent Nos. 2 and 5 the petition is taken up for final hearing and disposal considering the view that the Court is inclined to adopt. Though the petitioner has impleaded respondent Nos. 3 and 4 society and the school respectively, it is not necessary to hear the said respondents for the reasons that follow hereinafter.

2 **Rule.** Learned Advocate appearing on behalf of Respondent No.1 Board as well as learned Assistant Government Pleader appearing on behalf of respondent Nos. 2 and 5 waive service.

3 This petition has been preferred praying for following reliefs :

“21. In view of the aforesaid premises, Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ, direction or order :-

a) Quashing and setting aside the decision/order passed by the respondent No.1 Board after reconsideration of the matter pursuant to the directions issued by the State Government on 1-2-2007.

b) Directing the respondent No.1 Board to permit the petitioner

to appear for Std. X Board examination commencing from 12-3-2007.

c) Granting such other and further relief and passing such and further orders as may be necessary in the facts of the case.

d) Awarding cost of this petition”.

4 The principal grievance of the petitioner is that considering the backdrop of the facts in which the petitioner has been constrained to approach this Court the impugned resolution/order dated 5.3.2007 passed by respondent No.1 Board be quashed and set aside as being in violation of principles of natural justice. As a copy of the said resolution/order was not available with the petitioner when the petition came to be preferred, today at the time of hearing learned Advocate for the petitioner has been permitted to place the same on record.

5 The learned Advocate appearing on behalf of the petitioner has placed reliance on the ratio of the Apex Court decision in the case of *Rajesh Kumar And others Vs. Dy. CIT and others, (2007) 2 SCC 181* to submit that once an order results in civil consequences which are prejudicial to a party, regardless of whether the order is administrative in nature or quasi judicial, an opportunity of hearing is a must and the respondent-Board having failed to comply with the settled legal position it was necessary that the impugned order is struck down.

6 The learned Advocate appearing on behalf of respondent No.1 Board on advance copy has tendered detailed affidavit-in-reply

dated 8.3.2007. It was submitted that the petitioner – student is not required to be granted an opportunity of hearing as firstly, respondent No.1-Board has not made any order qua the petitioner-student. The action which has been taken by respondent No.1-Board is vis-a-vis the school i.e. St. Xaviers School, Loyala Hall, Navrangpura, Ahmedabad, wherein the petitioner was studying in Standard IX during academic year 2005-2006. That it was found that the petitioner student along with 36 other students had failed to clear examinations conducted by the School for standards VIII, IX and XI, despite which according to respondent No.1 Board, the school created evidence so as to show that the petitioner student had cleared the examinations. That in fact, no retest as such had been conducted by the school qua the examinations held in April, 2006. In support of the submission the learned Advocate sought to place reliance on the original copies of answer sheets to submit that the answer sheets which were stated to have been written by the students in retest held in May 2006 did not contain either the signature of the supervisor or the assessment by the examiner of the said question paper. That the question paper remained the same and only answer sheets were substituted. That even otherwise the school was not entitled to hold any retest in absence of any provision permitting such a course of action, only exception being in past when there was change in curriculum special circulars were issued permitting such an exercise.

6.1. That respondent No.1 – Board had taken only a decision to deregister the school in question once it was found that school had indulged in malpractice by fraudulently creating record and

substituting such record vis-a-vis original record and hence, if as a consequence, the petitioner student was informed that the earlier decision of the student having failed at the examinations conducted in April 2006 would prevail, the petitioner student can only seek hearing from the school and respondent No.1 Board was not required to hear the petitioner. That respondent No.1 Board had merely directed the school to cancel results of the examinations stated to have been held in May 2006 and follow results of April, 2006 examinations only.

6.2. Another limb of contention was to the effect that respondent No.1 Board is not in charge of conducting examinations at the level of standards VIII, IX and XI and hence, respondent No.1 Board is not required to grant any opportunity of hearing to the students who took such examinations which were conducted by the school.

6.3. It was further submitted that respondent No.1 Board had already made an order on 20.12.2006 which had been challenged before this Court in an earlier round of proceeding by the petitioner and the Court had rejected the said petition. That the petitioner thereafter approached the State Government. In absence of any statutory right of appeal before the State Government, the State Government vide communication dated 1.2.2007 had merely asked the Board to reconsider decision dated 20.12.2006 and therefore also there was no occasion to grant any hearing to the petitioner.

6.4 Further contention was made to the effect that the State Government did not have any power to issue any such direction viz. direction in individual cases, the only powers available to the State Government being in context of policy matters which are applicable to the public in general. In support of the submission reliance has been placed on (i) an unreported decision of this Court in the case of *Gujarat Secondary Education Board Vs. Janta Hindi Vidyalay in Appeal From Order No. 146 of 1999 dated 18.3.1999*, and (ii) *N.M.Patel & Others Vs. State of Gujarat & Another* 2003(1) GLH 582 and (iii) *Balshastri B. Premi Vs. State of Gujarat & Another*, 2006(3) GLH 561.

6.4. In so far as prayer 21(b) is concerned viz. plea on behalf of the petitioner to permit the petitioner to appear at the examination, respondent No.1 Board having accepted the form and issued receipts, it was submitted that it was not open to the High Court to pass any interim direction of such a nature as held by the following decisions :

(i) *C.B.S.E. And Another Vs. P. Sunil Kumar and others*, (1998) 5 SCC 377, (ii) *Council for Indian School Certificate Examination Vs. Isha Mittal and Another*, (2007) 7 SCC 521, (iii) *Solanki Pravinkumar Gagabhai Vs. State of Gujarat and others*, 2002 (3) GLH 299, (iv) *Regional Officer, CBSE Vs. Ku. Sheena Peethambaran and others* (2003) 7 SCC 719, (v) *State of Tamil Nadu and others Vs. St. Joseph Teachers Training Institute and Another*, (1991) 3 SCC 87.

7. In the earlier round of proceedings between the same parties

while passing order dated 10.1.2007 in Special Civil Application No. 745 of 2007 it was recorded by the Court that :

“3. The brief facts as available on record show that the petitioner herein was pursuing studies in Standard 9(C) with respondent No.4 – School. The petitioner took examination conducted by respondent No.4-School in April, 2006 but the result was not declared and the parents of the petitioner were invited by the Principal of respondent No.4 School for discussion. In pursuance of such meeting, it is the say of the petitioner, that the Principal offered to hold a re-test for the petitioner in the subjects mentioned in the impugned order dated 20.12.2006. According to the petitioner, the petitioner appeared at such re-test on 11th May,2006. The result of the re-test was declared subject to the petitioner opting to seek admission in 10th Standard in some other school namely, other than respondent No.4 – School. The petitioner in fact did obtain admission in another school.

4. According to the petitioner, whatever may be dispute between the respondent No.1 – Board and respondent No.4 School, even if the charges against respondent No.4 School are proved to be correct, the petitioner cannot be visited with a civil consequence, which tantamounts to penalty, without granting an opportunity of hearing to the petitioner, even if the same is in consequence of the order made by respondent No.1 Board against respondent No.4 School. That merely, because Principal of the respondent No.4 School has been granted an opportunity of hearing by the respondent No.1-Board that by itself is not

sufficient in so far as the petitioner is concerned and the petitioner must be granted an independent opportunity of hearing.”

8. The Court thereafter passed the following order :

“7. Taking into consideration the facts which have come on record, it is apparent that the petitioner can implead himself in appeal which is filed or is to be filed by respondent No.4 School as being a person affected by the impugned order. The petitioner can also file an independent appeal. Any observation made by this Court on merits of the matter at this juncture is likely to prejudicially affect the petitioner in the appeal that the petitioner may file, hence it is not necessary to record any findings as to various averments made by the petitioner. Suffice it to state that the facts per se are not in dispute, namely, withholding of result, conducting of re-test and declaration of result thereafter, coupled with the fact that the petitioner has been required to seek admission in another school subsequent to the aforesaid exercise.

8. In the aforesaid circumstances, it is not necessary to entertain the petition at this stage. The petitioner, if so advised, may seek an opportunity of hearing from respondent No.1 – Board. The petition is, hence, summarily rejected”.

9. Subsequent thereto the petitioner moved an application dated 19.1.2007 before the respondent State Government and in paragraph No. 22 of that application, it was specifically stated that

over and above what is stated in the application, the application may be granted after taking into consideration the evidences and contentions that may be raised at the time of hearing. In the meantime on 25.1.2007 in a similar application/representation made by the school the State Government had directed the Board to reconsider the decision dated 20.12.2006 bearing in mind the future of the students and adopting a humanitarian approach. Following the said communication dated 25.1.2007 in case of the school, in case of the petitioner the State Government on 1.2.2007 once again stated the same thing and informed the petitioner that respondent No.1 Board had been asked to reconsider the decision dated 20.12.2006.

10 Thereafter, respondent No.1 Board in the meeting of the Executive Committee held on 5.3.2007 came to the conclusion that it is not necessary to reconsider the earlier decision dated 20.12.2006.

11 Thus, it is apparent that at no stage has the petitioner student been heard by any authority. In so far as the last contention raised on behalf of respondent No.1 Board to the effect that the State Government cannot issue any direction suffice it to state that not only has the said direction/communication not been challenged by respondent Board, but as the impugned resolution/order dated 5.3.2007 records respondent No.1 Board has in fact deliberated on merits of the issue. It is not necessary for this Court to record any opinion as to whether the said decision is correct or not in light of the view that the Court is inclined to take.

12 The remaining contentions lose sight of the basic fact that regardless of whether the Board is in charge of holding examinations for Std. VIII, IX & XI, by virtue of the order made and directions issued to the school the direct consequence is that the petitioner student gets affected. The Board cannot be heard to take a specious plea that in so far as the students are concerned it is the school which is required to hear them. This argument loses sight of the fact and the position of the school vis-a-vis the Board. Even if the school grants an opportunity of hearing to the student, the school is not in a position to go beyond the direction and the order made by the Board so as to give any relief to the student. If this be the position, the Board cannot be heard to contend that the Board is not required to hear the affected parties. This is all the more necessary taking into consideration the fact that there is a serious dispute between the petitioner student on one hand and the school on the other : according to the students, the students were invited by the Principal of the School and at the instance of the management of the school the students agreed to take the retest held in May, 2006; while the school has adopted a stand that it was at the instance of the petitioner student and because of the request made by the parents of the students that the school conducted the retest. In the circumstances, the contention on behalf of the respondent Board to the effect that the school has committed fraud by creating and tampering with the evidence and record and the students are party to such fraud cannot be accepted at face value at this stage. This involves disputed facts from which correct facts can be ascertained and sorted out only after evidence

is led. As already noted in the earlier round of proceedings this Court has specifically recorded that it was the Principal who offered to hold retest of the petitioner in the subjects mentioned in the earlier order dated 20.12.2006. The Court has also recorded the submission on behalf of the petitioner student in the earlier round of proceedings that an opportunity of hearing to the Principal of the School per se does not amount to an opportunity of hearing to the petitioner student. This recording of facts and contentions has to be appreciated in light of the finding by the Court that the Court has refrained from dealing with the merits of the respective stands for the simple reason that the petitioner at that point of time was relegated to avail of the opportunity which the school had already availed of by way of application/representation/appeal. Therefore, merely because for the purpose of statistics at the end of the order it was stated that the petition was rejected it is not possible to accept the contention that the said submissions made on behalf of the petitioner stood rejected. In fact the Court had not expressed any opinion in this regard and even today the Court does not intend to express any opinion on merits of the submissions made on behalf of the petitioner.

13 In the aforesaid state of facts and circumstances of the case it is apparent that the impugned order dated 5.3.2007 in so far as it affects the petitioner student cannot be permitted to operate and is hereby quashed and set aside. Respondent No.1 Board is directed to grant a reasonable opportunity of hearing to the petitioner student and then take a fresh decision vis-a-vis the

student in accordance with law.

14 In so far as the contention raised on behalf of the petitioner student that the petitioner student be permitted to appear at the examination to be conducted by respondent No.1 Board for standard X or standard XII, as the case may be, suffice it to state that, in light of what is stated hereinbefore and the settled legal position it is not possible to grant the said prayer and the same is accordingly rejected.

15 The petition is accordingly partly allowed to the aforesaid extent. Rule made absolute. There shall be no order as to costs.

Sd/-
(D.A. Mehta, J)

m.m.bhatt